

OUTGOING AIRGRAM

DEPARTMENT OF STATE: DIVISION OF COMMUNICATIONS AND RECORDS

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TOKYO

A-505 Jan 25, 1952

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Subject: PCN Treaty with Japan. Mission's despatch 963,
January 2, 1952.

The points described in Mission's report of the December 28 review meeting have been for the most part sufficiently treated, for present purposes, in previous instructions, which the Department trusts will by now have all reached Tokyo.

With reference to the second sentence of the first paragraph of ref. despatch, the Department requires an account of the questions raised by the Japanese and of the answers thereto given by the Mission.

With further reference to the relationship between the treaty and the 1924 Act, the Department disagrees profoundly with the statement that any provisions of the treaty "are labored in construction ... because they are based on existing inequality of treatment". It follows that the statement that "the phrases in question might have been so drafted as to be applicable if the Act of May 26, 1924 were superseded by a more favorable law", which erroneously implies that they are not applicable so long as the Act is in force, needs to be corrected. The treaty stands on its own bottom, irrespective of the 1924 Act. The standard draft, as presented to Japan, was formulated for general use with other countries long before a negotiation with Japan was even up for consideration; and, to the best of Department's knowledge and intent, it is perfectly straight-forward and free of guile in all its parts and provisions.

Insofar as particular passages of the draft appear to the Japanese to be awkwardly drafted from the rhetorical point of view,

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or difficult to translate properly, the Department is open to suggestion for appropriate revisions. The ideal should be a draft having maximum lucidity in both languages, insofar as legal usages permit; and, although many improvements have been already made in the readability and clarity of the standard draft since the time of the China negotiation, Department does not venture to assert that further linguistic improvements are not still possible.

As to laws in the U.S. which may make certain statutory rights of aliens dependent on whether they have declared intention to become citizens, or upon whether they are eligible to citizenship. - The Treaty, which is paramount to existing statutes and creates independent rights (a point of obviously great interest to the Japanese, and which should be impressed upon them), does not recognize any such distinctions (except possibly as noted in REFTEL 1969, January 15). National treatment means that, with respect to any given matter, a Japanese national enjoys equality with the American citizen, regardless of the eligibility status of the Japanese. Similarly, most-favored-nation treatment means he enjoys equality with the Englishman, the Frenchman, the Dane or any other foreigner, regardless of eligibility status.

Where the treaty, in the land article, preserves state freedom of action with respect to land ownership (as well as leaseholds for non-treaty purposes), the language is drafted indeed so as to allow State freedom of ~~unrestricted~~ ^{unrestricted} action to differentiate between aliens of different nationality, if the State so chooses in face of the corollary right of the foreign country to retaliate. (Respect for State prerogatives in connection with real property is an U. S. treaty policy, and conforms with the views of the Senate). Some of the States, mainly in the Far West, have of course in the past enacted land legislation imposing greater disabilities on ineligible aliens than on other aliens. (There are often disabilities on eligible aliens also). These laws are not, however, at bottom really motivated by the 1924 Act. Rather, that Act merely suggested a convenient formula to the legislative drafter when it came to implementing a policy the State was set upon anyhow. Without the

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1924 Act, other formulae than "ineligibility to citizenship" could, and presumably would, have been devised to achieve the intended result. States have, in fact, both before and after 1924, used other formulae: e.g., specifically naming the countries to whose nationals the disabilities do or do not apply. Repeal of the 1924 Act would not, therefore, be enough to insure that States would abandon the policies which underly the land laws in question. The future of such laws will be shaped by the courts, which seem to be increasingly inclined to question them on constitutional grounds, and by public opinion, which seems tending to the view that they are wrong in principle and no longer necessary. (It may be conceded, of course, that as repeal of the 1924 Act would negate the formula now commonly used in anti-Oriental land legislation, States which definitely wished to continue the policy involved would often have to pass new laws, and it may be open to question whether present sentiment is such that very many legislatures would be disposed to take this positive step).

The Department is inclined to believe that it is as yet too early to reach a definite decision as to whether a statement for Japanese use of the kind referred to on the top of page 2, ref. despatch, would be appropriate and necessary; and invites the Mission to pass along any further suggestions it may have with reference thereto as the negotiation progresses. For the present, the Mission may inform the Japanese as follows. - The two bills cited are the culmination of a long period of labor and study by the competent Congressional committees, and of exhaustive public hearings. The bills, in their present revised form, appear to have reached a very advanced stage of development; and, although the Department is not in position to forecast Congressional action, especially on so complicated a matter as a comprehensive revision and codification of immigration laws, informed observers expect legislation along the lines of these bills to be enacted during the current year. That feature of these bills which repeals the 1924 Act, removes the bar to naturalization of Japanese, and authorizes an immigrant quota for Japanese, is firmly supported and favored by the Department. The Department may observe, finally, that it

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does not believe modification of the 1924 Act as it affects Japan is any longer a very controversial issue; appropriate Congressional action, so far as Department is aware, seems to be largely a matter of the time required to arrive at a consensus on the many problems that a single-package immigration and naturalization bill obviously involves, in a situation in which Congress has many urgent demands upon its attention.

Having stated its fullest concurrence in the proposition that early action on the 1924 Act is eminently desirable, the Department also ventures mildly to put forward the sanguine philosophical view that conclusion of the treaty alone would be a vast step forward in achieving the position which the Japanese seem to feel is denied them because of the 1924 Act. The conclusion of this treaty - provided, as it is, on the highest principles of justice, morality and equal dealing - would hardly be possible except under psychological conditions opposite to those prevailing in 1924. Therefore, the treaty in and of itself, apart from the 1924 Act, cogently gains for Japan much the same high objective that would be represented by repeal of the Act. In mentioning this, the Department by no means wishes to belittle the importance of repeal; but merely to point to a bright aspect of the situation which it would be a mistake to overlook.

There follow such additional comments as now seem required concerning the three specific articles referred to on pages 2 and 3 of ref. despatch.

Article I. The word "equitable" has come into current general usage, and the Department does not at the moment know of an apt synonym. It is intended to convey the idea of decent, fair and just; and if there are translation difficulties, it should be possible to find some equivalent wording in Japanese without changing the English.

Article IX, point a. Residence is a much-used concept in U. S. tax law and practice. Its presence in the treaty serves to assure to Japanese nationals all U. S. tax advantages and privileges

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